

STATE OF IOWA



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To: Government Oversight Committee
From: William P. Angrick II, Citizens' Aide/Ombudsman
Date: October 18, 2005
Re: Department of Public Safety and Public Records Law

The Citizens' Aide/Ombudsman's Office received a complaint in January 2005 and in February the Government Oversight Committee formally requested that I review the Department of Public Safety's (DPS) willingness to release specific pieces of information contained in accident and investigative reports regarding a triple fatality in Decatur County. It was the policy of the Department of Public Safety and the Iowa Department of Transportation not to release accident or investigative reports (or much detail contained in those reports) because they believed the information was confidential under Iowa Code sections 22.7(5), 321.266, and 321.271.

In a February 4, 2005 letter addressed to the Iowa Department of Transportation (DOT), Assistant Attorney General Mark Schouten states they reviewed the matter further and "now advise that Iowa Code section 321.271 requires the DOT to also release information from these filed reports concerning the 'immediate facts and circumstances' surrounding the accident." Mr. Schouten advised the DOT to release the name and address of parties, the date, time, and specific location and other additional information as "immediate facts and circumstances," but noted dates of birth, social security number, or alternate drivers license number should not be released as "immediate facts and circumstances" of the accident.

On March 2, 2005 Assistant Ombudsman Angela Dalton attended a meeting with staff from the DOT, DPS, and Assistant Attorneys General Mark Schouten and Jeffrey Peterzalek representing the agencies. The group went over each field on the DOT's accident report form and discussed whether information can or should be disclosed to the public. The discussion was productive. Agreement was reached on many fields regarding whether they should be released or not. However, there was disagreement regarding the disclosure of some items on the form. See Accident Report attached.

Immediately preceding the March meeting the DOT implemented the change of the TRACS system to include the capability to print reports which automatically redact and transform certain fields to allow the DOT and the DPS (and all agencies participating in TRACS) to make those reports available to the public.

Shortly thereafter, the DPS announced that each District Office would have three ring binders with accident reports and incident reports for the public to review at their leisure. On August 27, 2005 the DPS implemented a new statewide on-line database whereby all redacted accident reports (and soon all redacted incident reports) will be available. It appears that the DPS is generally following DOT's advice regarding what is redacted.

“The Devil is in the Details”

There remains some disagreement regarding what fields in the report forms should be routinely redacted. Federal law (18 U.S.C. § 2721 et seq.) allows the states to release “information on vehicular accidents, driving violations, and driver’s status” and to release personal information for any other use authorized by the state “related to the operation of a motor vehicle or public safety.” Information which is currently redacted is being done under the opinion that it is not “immediate facts and circumstances” of an accident. However, there are differing opinions on:

1) what information constitutes “immediate facts and circumstances” related to an accident (e.g., witness names), and

2) whether that analysis should even apply to certain fields in the report form which really do not pertain to the accident itself. For example, a tow occurs after the accident and has no bearing on what happened in the accident, but information about it is being kept confidential. The fact this information is in the report form should not preclude its release.

On September 2, 2005, Randy Evans from the Des Moines Register wrote a letter to DPS and expressed concerns about the following information being redacted:

- Addresses of the drivers
- Names and addresses of the owners of the vehicles
- VIN and license plate numbers
- Commercial license plate numbers and federal truck registration numbers
- Name of the tow company – [Note: not currently a specific field on accident report]
- Names and addresses of non-motorists involved in the accident

My office is concerned that the DOT and DPS is routinely redacting:

- Witness names and addresses
- Names and addresses of vehicle owner (if different from driver)
- Tow number and whether it was a private tow
- Field which indicates if “Supplemental Information Will Follow?”
- Technical Investigator’s report number
- “Agency Specific” field
- Other Technical Investigating Agency
- Fields indicating who reviewed the report and the date reviewed

Additionally, at present we question whether the DOT and DPS should be redacting other fields or information that further identify the parties, vehicles and witnesses involved. These include:

- Date of birth [versus age – TRACS currently converts date of birth to age]
- Telephone numbers of drivers, vehicle owners, and witnesses
- VIN, driver's license number, license plate number

We believe further consideration should also be given to privacy concerns when considering release of personal information allowed under federal and state law. Consideration should be given to whether there is a public purpose for releasing such information and/or whether that specific information, which the individual is required to provide an investigating officer, would make the individual vulnerable to identity theft. [An additional issue we have not explored is the extent to which the release of personal information may subject a person to harassment or other unwanted contact]. We believe the release of each piece of information which identifies or can be used to identify a particular individual should be weighed against the overall purpose and intent of the public records law and the risk of identity theft. It is because of this concern that we believe an individual's social security number should not be publicly released and that the release of other personal information be evaluated carefully.

We also believe DPS and the DOT have made substantial progress towards the intent and spirit of the Open Meetings Law. We intend to keep working with the agencies to work out the specific details regarding what information about vehicular accidents can be released and try to ensure that both agencies have policies which are consistently followed across Iowa.